Filed 3/12/19 In re G.C. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re G.C., et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. A.V., Defendant and Appellant.	E071486 (Super.Ct.No. RIJ1700224) OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni, Judge. Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant, A.V. (mother), is the mother of G.C. and J.G. (the children). Mother appeals from the judgment terminating her parental rights. The sole issue she raises is lack of compliance with the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) and related California law (Welf. & Inst. Code, § 224 et seq.).[1] We affirm.

PROCEDURAL BACKGROUND

Because we address only an ICWA claim, a brief synopsis of the factual and procedural history will suffice.

On March 21, 2017, the Riverside County Department of Public Social Services (DPSS) filed an amended section 300 petition on behalf of the children. G.C. was seven years old at the time, and J.G. was one. The children had different fathers. G.C.'s father was John C., and J.G.'s father was John G. The petition alleged that both children came within the provisions of section 300, subdivision (b) (failure to protect), and that G.C. also came within section 300, subdivision (g) (no provision for support). The petition included the allegations that mother abused controlled substances and exposed the children to a detrimental home environment by continuously engaging in sexual activity in their presence.[2]

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[1] All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

[2] The petition contained allegations concerning each child's father, as well. Since neither father is a party to this appeal, we will not discuss the allegations concerning them.

On March 22, 2017, a juvenile court detained the children from mother's care. J.G. was not detained from his father, but was ordered to remain in his custody. G.C. was placed with the maternal grandmother.

On April 18, 2017, DPSS filed a second amended petition. The social worker also filed a jurisdiction/disposition report, stating that G.C. was in the care of the maternal grandmother, and J.G. remained in the care of his father, John G. The social worker reported that mother had ongoing substance abuse issues and had not taken any steps to acknowledge or mitigate the concerns. The social worker also reported that G.C. had negative reactions to visits with mother. Mother engaged in negative behavior and caused emotional stress for G.C. After phone calls with mother, G.C. reacted physically by twitching and feeling sick to her stomach.

The court held a contested jurisdiction/disposition hearing on May 16, 2017. County counsel noted that DPSS filed a third amended petition. The court sustained the petition and adjudged the children dependents of the court. It ordered custody of J.G. to remain with John G., subject to DPSS supervision and family maintenance services. It ordered G.C. removed from mother's custody. The court ordered mother to participate in reunification services. It also ordered a neurological assessment for G.C. and issued a three-year restraining order prohibiting mother from having contact with her, except for court-ordered visitation.

On September 12, 2017, the court held an ex-parte hearing and suspended visits between mother and G.C., finding them to be detrimental to G.C.

On October 20, 2017, J.G.'s father, John G., passed away. Thus, he was stricken from the case. J.G. remained in the care of his paternal grandmother.

The social worker filed a six-month review report on November 7, 2017, recommending that mother's reunification services as to J.G. be terminated and a section 366.26 hearing be set. As to G.C., the social worker recommended that the court continue services. Mother had been unable to remain sober to participate in counseling services or a psychological evaluation. She was homeless and unemployed.

The court held a contested six-month review hearing on December 21, 2017, and terminated mother's reunification services as to J.G., noting that he was under the age of three at the time of removal. The court set a section 366.26 hearing. As to G.C., the court continued services and ordered visitation to be suspended.

The court held a contested 12-month review hearing as to G.C. on June 15, 2018. Mother did not appear but was represented by counsel. The court terminated services and set a section 366.26 hearing.

On October 15, 2018, the court terminated parental rights and set adoption as the permanent plan for both children.

Mother filed a timely notice of appeal.

ANALYSIS

The Court Properly Found That ICWA Did Not Apply

Mother contends that the juvenile court erred in finding ICWA did not apply, since the ICWA notices sent were deficient. She asserts DPSS failed to locate and interview her father (the maternal grandfather) to obtain information about his mother, who was the

relative with Indian ancestry. Mother claims that without the maternal great grandmother's maiden name, the tribes had inadequate information to determine if the children were eligible for enrollment. We disagree.

A. *Requirements Under ICWA*

"The social worker has 'a duty to inquire about and obtain, if possible, all of the information about a child's family history' " required under ICWA regulations. (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1116 (*S.M.*).) "This duty arises both under ICWA itself and under California's parallel statutes, Welfare and Institutions Code section 224 et seq." (*In re K.R.* (2018) 20 Cal.App.5th 701, 706.) "[W]here the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912, subd. (a); see *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1264-1265.) For purposes of ICWA, an "Indian child" is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4); Welf. & Inst. Code, § 224.1, subd. (a) [adopting federal definitions].)

"One of the primary purposes of giving notice to the tribe is to enable it to determine whether the minor is an Indian child. [Citation.] Notice is meaningless if no information or insufficient information is presented to the tribe. [Citation.] The notice must include . . . information about the Indian child's biological mother, biological father,

maternal and paternal grandparents and great-grandparents or Indian custodians, including maiden, married and former names or aliases, birthdates, places of birth and death, current and former addresses, tribal enrollment numbers, and/or other identifying information. [Citations.]" (*S.M., supra,* 118 Cal.App.4th at pp. 1115-1116, fn. omitted.) "Each Indian tribe has sole authority to determine its membership criteria, and to decide who meets those criteria. [Citation.] Formal membership requirements differ from tribe to tribe, as does each tribe's method of keeping track of its own membership." (*In re Santos Y*. (2001) 92 Cal.App.4th 1274, 1300.)

"The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.] [¶] We review the trial court's findings for substantial evidence. [Citation.] ' "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." [Citation.]' [Citation.] . . . Deficiencies or errors in an ICWA notice are subject to harmless error review." (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 57 (*Charlotte V.*).)

B. *ICWA Procedural Background*

On March 17, 2017, mother denied that she had any Native American ancestry. However, she said she heard her father might have some. When the social worker asked what tribe her father may have ancestry with, mother responded, "Oh, I wouldn't even know, it's not enough to get money or anything." J.G.'s father, John G., denied that he

had any Native American ancestry. G.C.'s father, John C., was not questioned, since his whereabouts were unknown.

On March 22, 2017, mother filed a parental notification of Indian status indicating that she may have Indian ancestry through her grandmother on her father's side. She identified the tribe as Blackfeet or Cherokee. She reported that her grandmother's name was Mabel V., and she was born in Arkansas in 1922. Mother did not remember her maiden name. The court asked the maternal grandmother if she had any information on Mabel V. She said Mabel V. (the maternal great grandmother (the MGG)), was deceased, but 1922 sounded right. The maternal grandmother added that she never heard of any Indian heritage on that side of the family. The court found that an Indian child may be involved and ordered DPSS to provide ICWA notice to all identified tribes and the Bureau of Indian Affairs (BIA).

On April 17, 2017, DPSS sent ICWA notices to the Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, the United Keetoowah Band of Cherokee Indians (collectively, the Cherokee tribes). DPSS also sent ICWA notices to the Blackfeet Tribe of Montana and the BIA. The notices included G.C.'s name and birthdate.[3] They also included mother's and John C.'s (the parents) names, mother's current address, the parents' former addresses and birthdates, and John C.'s birthplace. The notices listed the maternal grandmother's name, and listed her current address as

[3] The ICWA notices did not list J.G., since he remained in the custody of his father. We note that any ICWA findings would have been the same for both children, since the relative with alleged Indian ancestry was on mother's side, and the children had the same mother.

Anaheim, California. As for the maternal grandfather, they stated, "No information available." The notices listed the MGG's name as "Mabel V.," and her birthdate and place as "1922" and "Arkansas." They listed her tribal information as the Cherokee tribes and the Blackfeet Tribe.

On March 29, 2017, the United Keetoowah Band of Cherokee Indians responded to the ICWA notices with letters stating that it would not intervene in this case, as there was no evidence to support a finding that G.C. was a descendant of anyone on the Keetoowah Roll. G.C. did not meet the definition of an Indian child, and neither G.C. nor her biological parents were members of the tribe.

On April 20, 2017, the Cherokee Nation responded to the ICWA notices with a letter stating that G.C. was not an Indian child in relation to the Cherokee Nation.

At a hearing on April 21, 2017, the court found good ICWA notice. No one objected to the ICWA findings.

On August 25, 2017, the Blackfeet Tribe responded to the ICWA notices with a letter stating that G.C. was not an Indian child. The letter noted that the Blackfeet Tribe's blood quantum requirement for enrollment was one-fourth Blackfeet blood, and that G.C. was not eligible for enrollment.

At the contested six-month review hearing on December 21, 2017, county counsel reminded the court that ICWA notices were filed on April 17, 2017. Counsel informed the court that DPSS had received no indication that ICWA applied with regard to the Blackfeet or Cherokee tribes. The court found that ICWA did not apply. No one objected to the ICWA findings.

The social worker subsequently met with mother on March 20, 2018, and reported that mother did not provide any ICWA updates.

On September 21, 2018, the social worker spoke to the maternal grandmother, and she said there was no Indian ancestry on either the maternal or paternal side of the family.

C. *DPSS Complied With its Duties*

The crux of mother's claim is that DPSS's investigatory efforts to obtain information about the children's Indian heritage was inadequate because it never tried to contact the maternal grandfather to ask him for his mother's maiden name. She suggests that her father "should know his mother's maiden name" and that if the MGG was enrolled in a tribe, "it was likely under her maiden name." Mother also claims DPSS never asked her to contact her father for further information. We conclude that DPSS complied with its duties.

"The social worker has 'a duty to inquire about and obtain, if possible, all of the information about a child's family history' " required under ICWA regulations. (*S.M., supra,* 118 Cal.App.4th at p. 1116.)

Here, the social worker interviewed mother, and she initially said she had no Indian ancestry. A few days later, she filed a parental notification of Indian status, indicating that she may have Indian ancestry through her grandmother on her father's side. She listed her grandmother's name, birthplace, and birth year. She also said her heritage was either Cherokee or Blackfeet. Mother could not remember her grandmother's maiden name. The court asked the maternal grandmother if she had any information on the MGG, but she said she was deceased, and she never heard of any

Indian heritage on that side of the family. The social worker sent ICWA notices, pursuant to the court's order.

Although mother complains that the social worker did not attempt to contact her father for information, we note she is not alleging that DPSS had the last known address for him, or that he was readily available, and they failed to contact him. We recognize that there is little information on what efforts were made to contact him. However, we observe that, on the ICWA notices, the social worker stated there was "no information available" regarding the maternal grandfather. This evidence implies that the social worker made efforts to contact him, but there was no information available.

Mother claims that the social worker was aware her father "lived in the area" because the social worker noted in a report that mother "sometimes stayed with her father." However, the review report mother is referring to merely states that she lived in her car during that review period, and also spent some of the time "living in her father's home." Contrary to her claim, there is no indication the social worker knew her father lived in the area, or that he even lived in the area. The social worker did comment that mother had been secretive on where she had been living.

Considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference, and resolving all conflicts in support of the court's order, as we must, we conclude that DPSS complied with its duties, and that the court properly found ICWA did not apply. (See *Charlotte V.*, *supra*, 6 Cal.App.5th at p. 57.)

D. *Any Error Was Harmless*

Even if we assume mother has shown inquiry or notice error, any error was harmless. Errors in ICWA notice are subject to harmless error review. (*Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 784.) "An appellant seeking reversal for lack of proper ICWA notice must show a reasonable probability that he or she would have obtained a more favorable result in the absence of the error." (*In re G.L.* (2009) 177 Cal.App.4th 683, 696.)

There can be no prejudice here unless, if the maternal grandfather had been asked, he could have provided DPSS with the MGG's maiden name, the tribes had the MGG enrolled under her maiden name, and/or they were unable to make an ICWA determination without her maiden name. Mother cannot say with any certainty that her father could provide DPSS with the MGG's maiden name. She merely claims that her father "*should* know" or was "*almost* certain" to know his mother's maiden name. (Italics added.)

Furthermore, mother's claim that, without the MGG's maiden name the tribes had inadequate information to determine if the children were eligible for enrollment, is based on speculation. First, mother is only theorizing that the MGG was enrolled in any tribe under her maiden name. She merely posits that "*[i]f* the great-grandmother was enrolled in an Indian tribe, she was *likely* enrolled by her parents, as a child." Second, DPSS sent ICWA notices, and the United Keetoowah Band of Cherokee Indians responded by stating that there was no evidence G.C. was a descendant from anyone on the Keetoowah Roll; it said it would not intervene in this case. The Cherokee Nation also sent a response

letter stating that G.C. was not an Indian child, and it would not intervene. The Blackfeet Tribe similarly responded by stating that G.C. was not an Indian child and not eligible for enrollment.[4] None of the tribes indicated they had insufficient information to make the determination that she was not an Indian child.

Mother argues that her claims are not based on speculation. We disagree and note "there is nothing whatever which prevented [her], in [her] briefing or otherwise, from removing any doubt or speculation." (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431.) Mother complains the social worker never asked her to contact her father to get information; however, she does not allege that she could have contacted him, if asked. Furthermore, if she did have the ability to contact him, she should have at least made an offer of proof or affirmative representation that, had her father been asked, he would have been able to provide DPSS with the MGG's maiden name. (See *Ibid.*) "In the absence of such a representation, the matter amounts to nothing more than trifling with the courts." (*Ibid.*)

The children "deserve permanence and stability as soon as possible." (*In re E.W.* (2009) 170 Cal.App.4th 396, 402.) We decline to further delay the proceedings, particularly where mother has not shown a reasonable probability that the maternal grandfather was available, that he could have provided the MGG's maiden name, or that the Indian tribes were unable to make a determination of eligibility for enrollment

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[4] We note that the Blackfeet Tribe's letter stated the blood quantum requirement for enrollment was one-fourth Blackfeet blood. Thus, even if the MGG had some Blackfeet ancestry, it appears that the children would not have met the blood quantum requirement for enrollment.

without the MGG's maiden name. (See *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539 [when agency performed reasonable inquiry and found no reason to believe minor was an Indian child, "reversing the judgment . . . for the sole purpose of sending notice to the tribe would serve only to delay permanency . . . rather than further the important goals of and ensure the procedural safeguards intended by ICWA"].)

DISPOSITION

For the reasons stated, mother's claim that the termination order should be reversed is without merit. The order terminating her parental rights is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.